

## **§ 199.209**

(b) This subpart shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

### **§ 199.209 Other requirements imposed by operators.**

Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

### **§ 199.211 Requirement for notice.**

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

### **§ 199.213 Starting date for alcohol testing programs.**

(a) *Large operators.* Each operator with more than fifty covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1995.

(b) *Small operators.* Each operator with fifty or fewer covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1996.

(c) All operators commencing operations after February 15, 1994 shall have an alcohol misuse program that conforms to this subpart by January 1, 1996, or by the date an operator begins operations, whichever is later.

### **§ 199.215 Alcohol concentration.**

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to

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perform or continue to perform covered functions.

### **§ 199.217 On-duty use.**

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

### **§ 199.219 Pre-duty use.**

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

### **§ 199.221 Use following an accident.**

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under § 199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.

### **§ 199.223 Refusal to submit to a required alcohol test.**

Each operator shall require a covered employee to submit to a post-accident alcohol test required under § 199.225(a), a reasonable suspicion alcohol test required under § 199.225(b), or a follow-up alcohol test required under § 199.225(d). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.